

Case Summary

HKSAR v Lai Chee Ying (黎智英)

HCCP 738/2020; [2021] HKCFI 448

(Court of First Instance)

(Full text of the Court's decision in English at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=133717&QS=%2B%7C%28HCCP738%2F2020%29&TP=JU)

Before: Hon Anthea Pang J

Date of Hearing: 18 February 2021

Date of Reasons for Decision: 23 February 2021

Bail review – application of thresholds under NSL 42(2) – relevant considerations – weight of materials submitted – effectiveness of proposed bail conditions – individual circumstances of applicant

Background

1. The Applicant was charged with “collusion with a foreign country or with external elements to endanger national security”, contrary to NSL 29(1)(4). He applied to the Court for bail pursuant to section 9J of the Criminal Procedure Ordinance (Cap. 221) after the Chief Magistrate had refused his bail.

Major provision(s) and issue(s) under consideration

- NSL 42(2)
- Criminal Procedure Ordinance (Cap. 221) (“CPO”), ss. 9G(2) and 9J

2. The Court examined three issues:

- (a) the weight to be attached to the materials before the Court (“Issue (a)”);
- (b) whether the bail conditions offered by the Applicant were effective (“Issue (b)”); and
- (c) whether the Applicant’s personal background, resources and connections were relevant considerations (“Issue (c)”). (para. 14)

Summary of the Court’s rulings

3. The Court refused the application as it was not satisfied that there were sufficient grounds for believing that the Applicant would not continue to commit acts endangering national security if bail was granted to him. (paras. 2 and 24)

Issue (a)

4. On the question of whether a case was made out for the grant of bail under NSL 42(2), the Court applied *HKSAR v Lai Chee Ying* [2021] HKCFA 3 which referred to the consideration of “everything that appears to the court to be relevant to making that decision, including the possible imposition of appropriate bail conditions and materials which would not be admissible as evidence at the trial”, whereas s. 9N(e) of the CPO spoke in terms of “any other materials or representations which it considers credible or trustworthy in the circumstances”. (para. 16)

5. In making the assessment, consideration was not to be restricted to the likelihood and feasibility of a repetition of the same or similar acts forming the basis of the charge. The CFA in *HKSAR v Lai Chee Ying* did not so limit the ambit and “acts endangering national security” in the context of NSL 42(2) was construed as referring to “acts of that nature capable of constituting *an offence under the NSL or the laws of the HKSAR safeguarding national security*” (emphasis in the original). (para. 19)

Issue (b)

6. The Applicant’s undertaking (in not making any public statement or

not attending any interview, etc.) was just one of the considerations in the assessment because the question was not only about the alleged commission of the NSL 29(1)(4) acts but any acts endangering national security. (para. 20 as read together with para. 7)

Issue (c)

7. Although one's financial might, political ideology, and associations were not, *per se*, suggestive of the commission of any offence, these were relevant matters in the assessment. Matters like an applicant's background, associations, community ties and financial position were clearly relevant considerations. In the end, what the court had to do was to carry out "a predictive and evaluative exercise" having taken into account all the relevant matters. (paras. 21-23)

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